

expenses, or audience share; and he did not know how much money TTI/NMTV owes to TBN.

274. After Aguilar resigned, apparently under pressure from Crouch, Armando Ramirez joined the TTI/NMTV board. Ramirez had a long standing relationship with TBN that dated back to the late 1970's. When he joined TTI/NMTV, Ramirez was a paid TBN program host. He subsequently created another program for Community Educational Television, a company created by Crouch and whose board includes Duff. Immediately upon his election to the TTI/NMTV board, Ramirez, along with fellow directors Duff and Hill, voted to relieve Prime Time Christian Television of its debt to TTI/NMTV, a significant action about which Ramirez had virtually no knowledge. At the time, Ramirez knew nothing about the Odessa station which TTI/NMTV had sold to Prime Time. He did not know the extent of Prime Time's debt to TTI/NMTV, and he did not know how long the debt had been outstanding. He was not shown any documents concerning Prime Time's financial condition, and he had no understanding as to how, if at all, taking such action would benefit TTI/NMTV. In fact, relieving Prime Time of its debt to TTI/NMTV benefitted only TBN.

Finances

275. From TTI/NMTV's inception, TBN has controlled that company's finances in all material respects. After TTI/NMTV was formed, TBN's paid employees, consultants,

and lawyers prepared the fledgling company's LPTV applications. TTI/NMTV was never billed for any services connected with those applications. During the initial years of its existence, TTI/NMTV did not maintain a bank account at any financial institution. Rather, the company's finances were maintained by TBN personnel in a TBN account. The financial condition of TTI/NMTV was reflected each year in a TBN financial report which was prepared by accounting firms retained and paid by TBN. TTI/NMTV was never billed for any of these services.

276. During the initial years of TTI/NMTV's existence, TBN conducted telethons during which contributions were solicited from viewers for TTI/NMTV and its projects. TBN employees processed the money and pledges that were received as a result of the telethons, and TBN's accounting personnel determined whether and to what extent TTI/NMTV's account should be credited with any of the money received.

277. For a number of years, TBN accounting personnel debited TTI/NMTV's account for expenses incurred by TBN in connection with TBN's efforts to obtain translator and LPTV stations. Since TTI/NMTV was created for the purpose of obtaining such facilities, the inference that must be drawn is that TBN charged its translator/LPTV-related expenses to the TTI/NMTV account because TBN considered TTI/NMTV to be a mere subordinate vehicle for carrying out TBN's translator/LPTV activities. This practice caused TTI/NMTV's account to reflect an ever increasing negative fund balance which, by 1987, ballooned to more than \$480,000. No one -- not Crouch, Duff, or the company's CFO,

Espinoza -- ever questioned the TBN practice of attributing its translator/LPTV debts to TTI/NMTV despite the fact that during much of that time TTI/NMTV was virtually inactive.

278. When TTI/NMTV acquired its first full power television station in Odessa in 1987, it did so with money from TBN. As it had done with its other owned and operated companies, TBN provided the money to TTI/NMTV without any security, repayment terms, interest, or promissory note. This was consistent with TBN's *modus operandi* for companies whose governing boards -- and finances -- are controlled by Crouch and other TBN personnel. By contrast, companies with autonomous governing boards, whose stations are TBN program affiliates in the traditional sense, have received loans from TBN that are evidenced by formal written notes which contain all pertinent terms and conditions.

279. TBN's informal method of dispensing money for TTI/NMTV projects continued unabated through 1992. Thus, without any evidence of notes, security, terms, or interest rates, TBN funded the entire construction of TTI/NMTV's Odessa full power television station, the purchase and complete construction of TTI/NMTV's Portland full power television station, and the filing of numerous LPTV construction permit applications. Furthermore, TBN agreed to fund in the same informal manner TTI/NMTV's proposals to purchase additional full power commercial television stations in Wilmington, Delaware (\$3.6 million); Concord, California (\$5.4 million); and Hammond, Indiana (\$9 million).

280. The financial control that TBN exercised over TTI/NMTV is aptly illustrated by

events that took place after TTI/NMTV purchased the bare construction permit in Odessa. The record evidence reveals that within days of the Commission action granting the assignment of the construction permit to TTI/NMTV, Crouch expressed a desire to sell the Odessa authorization in order to pursue the acquisition of a full power commercial television station in a larger, more lucrative market. In a rare demonstration of independence, Duff and Espinoza defeated Crouch's motion because they yearned to construct a full-power television station that would be capable of providing local religious programming to Odessa's minority population. TBN ultimately built the Odessa station and gained another outlet for its network programming in that area. Indeed, the Odessa station broadcast nothing but TBN programming because TBN never funded the construction of any studios capable of producing local programs. Furthermore, within six months of going on the air and despite the fact that Duff and Espinoza believed the station was being well received by the Odessa minority community, Crouch prevailed upon Duff and Espinoza to sell the station.

281. The station was sold to Prime Time, a religious entity which promised to continue airing TBN programming. In fact, neither Crouch, Duff, nor Espinoza considered selling the station to anyone who would not continue to operate it as a TBN affiliate. Clearly, the continuation of TBN programming -- not return on investment -- was the main concern in finding a suitable buyer. No one associated with TTI/NMTV made any effort to determine the fair market value of the Odessa station before it was sold. In fact, although TTI/NMTV was a fledgling company that was heavily in debt, it agreed to sell the Odessa station to Prime Time for more than \$100,000 *below* what it cost to construct the facility.

282. The sale of the Odessa station to Prime Time was not a cash deal. Rather, TTI/NMTV took back a note for the entire \$650,000 sales price. When Prime Time subsequently expressed concern that it might go bankrupt if it was not relieved of its debt, TTI/NMTV simply wrote off the entire obligation. There was little, if any, consideration given to modifying the terms of the note in order to make it easier for Prime Time to continue making payments. Of course, the real motivation for cancelling Prime Time's debt was the concern that if Prime Time went bankrupt, TBN might lose an affiliate station in Odessa as well as other TBN affiliate stations that Prime Time then owned.

283. Clearly money was not a concern for TTI/NMTV because it had from TBN what in essence was a bottomless reserve of available funds *for projects that furthered TBN's goals*. Every existing full power television station that TTI/NMTV acquired or considered acquiring, and every application for a construction permit for a new LPTV or translator station that TTI/NMTV filed with the Commission was in a market that did not yet enjoy over-the-air reception of TBN programming. When it was not in TBN's interest to construct a studio in Odessa capable of originating local programming, the studio was not built. By contrast, when it benefitted TBN to have such a studio at TTI/NMTV's Portland, Oregon, station, or to commence construction of a new TTI/NMTV LPTV or translator station, the money and personnel that were needed became immediately available.

Personnel

284. The evidence reveals that throughout TTI/NMTV's existence, TBN personnel have performed work *at all levels* for TTI/NMTV without compensation and, in numerous instances, as part of their TBN duties. Crouch receives a salary from TBN and has always served simultaneously as an officer and director of both TBN and TTI/NMTV. Crouch's dual roles have rarely been well defined or easy to segregate because the two companies have historically been so inexorably intertwined. For example, when TBN entered into an affiliation agreement with TTI/NMTV to provide programming for TTI/NMTV's Portland station, Crouch executed the agreement on behalf of TBN. Duff did likewise on behalf of TTI/NMTV. It was plainly not possible for Crouch, a principal of both corporations, to have legitimately carried out his fiduciary responsibilities to both under such circumstances.

285. Similarly, Duff has always been a salaried employee and for a number of years was also an officer and director of TBN while serving as an officer and director of TTI/NMTV. The distinction between her two roles, like Crouch's, is profoundly blurred. For example, when TBN entered into an affiliation agreement with TTI/NMTV to provide programming for TTI/NMTV's Odessa station, Duff executed the agreement on behalf of TTI/NMTV. Thus, it was plainly not possible for Duff, a principal of TTI/NMTV and a salaried employee and assistant to the chief officer of TBN, to have legitimately carried out her responsibilities to both under such circumstances.

286. The address for TTI/NMTV's main offices has always been the same as the address for TBN's headquarters. But TTI/NMTV has never occupied its own offices within the TBN complex. For example, Duff's office at TBN has always served as her office for TTI/NMTV. Duff routinely performed numerous tasks on behalf of TTI/NMTV during her TBN work day, and her salary at TBN was never affected in any way. The work that Duff performed on behalf of TTI/NMTV was, in practicality, simply a part of her routine TBN duties. Duff often drafted correspondence relating exclusively to TTI/NMTV matters using TBN stationery and identifying herself in her capacity as Crouch's assistant at TBN. On numerous occasions, she directed to TTI/NMTV employees in Odessa and Portland the same TBN interoffice memoranda that she directed to TBN's owned and operated stations.

287. TBN personnel, consultants and lawyers were routinely utilized, often without cost to TTI/NMTV, to prepare, file, and prosecute TTI/NMTV's LPTV and translator applications before the Commission. TBN personnel performed all accounting activities for TTI/NMTV. TBN personnel performed all payroll activities for TTI/NMTV. When TTI/NMTV contemplated purchasing a full-power television station in Wilmington, Delaware, Crouch dispatched one of TBN's station managers to inspect the facility. Upon his return, the station manager reported his findings to TBN's Chief Engineer, Ben Miller, and to Duff. TTI/NMTV did not compensate TBN for the station manager's activities.

288. Miller supervised the overall construction of TTI/NMTV's full power television stations in Odessa and Portland. Miller independently authorized numerous purchase orders

for equipment and supplies for the Odessa and Portland facilities. He arranged in one instance without charge for the transfer of equipment from a TBN station to a TTI/NMTV station. Miller provided continuing oversight of the operation of the Odessa and Portland stations after they commenced broadcasting. He supervised the engineers at TTI/NMTV's Portland and Odessa stations, communicated with them directly, and in one case recommended a bonus for the work that a TTI/NMTV engineer had performed. Miller provided all of his services to TTI/NMTV without charge. He did not have to bill TTI/NMTV. Miller is a salaried TBN employee who performed many of his TTI/NMTV tasks during his TBN working day. Miller's TBN salary remained unaffected by the work he performed for TTI/NMTV. The work that Ben Miller did for TTI/NMTV was simply part of his TBN job.

289. In the final analysis, based on Miller's pervasive involvement in building and operating TTI/NMTV's stations, Crouch's and Duff's claims that Miller was merely a "consultant" to TTI/NMTV simply cannot be credited. Miller used a number of different titles depending upon the particular TBN-related company for which he was working at the moment. Miller's use of those titles, however, constituted nothing more than a contrivance. Miller and a host of other TBN employees performed work for TTI/NMTV as part of their jobs at TBN because TTI/NMTV was considered part of TBN.

Programming

290. As discussed above, TTI/NMTV's purpose at its inception was to acquire translator stations that would serve as additional outlets for TBN programming. The evidence reveals that every one of TTI/NMTV's LPTV and translator stations have always broadcast TBN programming. During the relatively brief time that TTI/NMTV held the license for the Odessa station, nothing but TBN programming was broadcast. The record evidence further demonstrates that, with the exception of some locally originated programming, the Portland station has also broadcast only TBN programming.

291. Indeed, it was understood by everyone associated with TTI/NMTV that when TTI/NMTV *applied* to the Commission for a construction permit or to acquire an existing station TBN would be the source of all network programming. No one even considered broadcasting programs provided by any other religious network. TTI/NMTV was created by Crouch who founded TBN. He controlled TTI/NMTV's affairs just as much as he controlled those of TBN. Under the circumstances, it would have been virtually impossible for a TTI/NMTV station to broadcast anything other than TBN programming. TTI/NMTV was, in every material respect, a TBN owned and operated company.

Other Considerations

292. TBN held out to the public that TTI/NMTV was nothing more than an operating division of TBN. Thus, in numerous "Praise The Lord" newsletters, TBN's monthly publication, it was represented in no uncertain terms that Espinoza, then host of the TBN program, "Felicidad," and a director of TTI/NMTV, was "a board member of our Satellite Division." The significance of this representation cannot be understated. TBN did not have a "Satellite Division" as such, and the only entity of which Espinoza was a board member was TTI/NMTV. In stating that Espinoza was a member of TBN's Satellite Division, TBN was referring to TTI/NMTV, which Crouch had created for the purpose of acquiring translator stations and rebroadcasting satellite-delivered TBN programming. TTI/NMTV may have been recognized under state law to be a sovereign corporate entity because it had its own articles of incorporation and bylaws, but Crouch plainly regarded TTI/NMTV as an operating branch of TBN. That was Crouch's frame of mind; that is how TBN characterized TTI/NMTV to the public in its newsletters; and that is how, in practice, Crouch and others at TBN treated TTI/NMTV.

293. TBN's communications counsel also treated TTI/NMTV as a TBN subsidiary rather than an independent corporate entity. This is most evident in the manner in which the law firm of May & Dunne billed for its services. During the early years of TTI/NMTV's existence, when May & Dunne performed work on behalf of the company, the law firm did not bill TTI/NMTV at all for its services. Commencing with TTI/NMTV's acquisition of

the Odessa station, May & Dunne included a line item reference for services rendered to TTI/NMTV in *TBN's* bills. The practice of sending one consolidated invoice to TBN for services rendered to TTI/NMTV, TBN, and other Trinity-named companies continued unabated for some five years. Clearly, May & Dunne's billing practice is a reflection of how the law firm viewed TTI/NMTV's relationship to TBN. The firm billed and expected payment from only TBN. It is yet another indication of the extent to which the two companies were in fact treated as inextricable.

294. In sum, the only conclusion that can logically be drawn from the foregoing is that Crouch and TBN exercised *de facto* control over all facets of TTI/NMTV's business. Indeed, it is difficult, if not impossible, to distinguish one company from the other.

2. Abuse of Process

295. The issue to be resolved is whether NMTV, Paul Crouch, TBN or its affiliates or principals abused the Commission's processes by using NMTV to evade the provisions of Section 73.3555(e) of the Commission's Rules and/or by using NMTV to improperly claim minority preferences in LPTV applications.

296. Abuse of process is a broad concept that includes use of a Commission process to achieve a result that the process was not intended to achieve or use of that process to subvert the purpose the process was intended to achieve. See Broadcast Renewal Applicants, 3 FCC Rcd 5179, 5199 n. 2 (1988). The Commission has held that it is an abuse of process to specify a surrogate to apply for a station so as to deny the Commission and the public the opportunity to review and pass on the qualifications of that party. Arnold L. Chase, 5 FCC Rcd 1642, 1643 (1990). Abuse of process "is not an easy matter to prove." WWOR-TV, Inc., 7 FCC Rcd 636, 638 (1992), quoting Memorandum Opinion and Order in BC Docket No. 81-472, 5 FCC Rcd 3902, 3903 ¶ 8 (1990). In adjudicatory proceedings, the conclusion that an entity has abused the Commission's processes must be based on more than a generalized concern that such abuse may be occurring. Such a conclusion requires a specific finding, supported by the record, of abusive intent. See Evansville Skywave, Inc., 7 FCC Rcd 1699, 1702 n. 10 (1992), citing FCC v. National Citizens Committee for Broadcasting, 436 U.S. 775 (1978); RKO General, Inc., 4 FCC Rcd 4072, 4073 (1989). Abusive intent can be inferred from NMTV's grossly inaccurate reading of the Commission's multiple

ownership rules and its resulting failure to reveal to the Commission the nature and extent of its relationship with TBN. Cf. WWOR, Inc., 7 FCC Rcd at 638 ¶¶ 24 and 25.

297. As discussed more fully below, the record evidence reveals that NMTV, Crouch and TBN abused the Commission's processes three times by using NMTV to evade, and attempting to evade, the limitations on cognizable interests that can be held by one person imposed by the Commission's multiple ownership rules. However, no such abuse occurred when TTI (and later, NMTV) claimed entitlements to minority preferences in its translator and LPTV applications.

Multiple Ownership

298. In 1985, the Commission amended its multiple ownership rules to increase from seven to 12 the number of full power commercial television stations in which a party could hold a cognizable interest. The Commission also created an exception to the so-called "Rule of 12's" by permitting a party to hold a cognizable interest in up to 14 full power commercial television stations, provided at least two of the stations were owned and controlled by minorities. Amendment of Section 73.3555, 100 FCC 2d 74 (1985). These rules remained essentially unchanged at all times relevant to these proceedings. In pertinent part, the rules provided:

Section 73.3555 Multiple Ownership

(d)(1) No license for a commercial ... TV broadcast station shall be granted, transferred or assigned to any party (including all parties under common

control) if the grant, transfer or assignment of such license would result in such party or any of its ... members, officers or directors, directly or indirectly, owning, operating or controlling, or having a cognizable interest in, either:

- (i) More than fourteen (14) stations in the same service, or
- (ii) More than twelve (12) stations in the same service which are not minority-controlled.

. . .

(3) For purposes of this paragraph:

. . .

(iii) *Minority-controlled* means more than 50 percent owned by one or more members of a minority group.

(iv) *Minority* means Black, Hispanic, American Indian, Alaska Native, Asian and Pacific Islander.

. . .

Note 1: The word *control* as used herein is not limited to majority stock ownership, but includes actual working control in whatever manner exercised.

299. The Commission created the minority-controlled exception to its multiple ownership rules because it recognized that, in some circumstances, the multiple ownership rules might "play a role in fostering minority ownership." Amendment of Section 73.3555, 100 FCC 2d at 94. In addition, the Commission envisioned that spurring minority ownership could contribute toward effectuating increased minority "participation" in the broadcast industry. Amendment of Section 73.3555, 100 FCC 2d at 97. The Commission plainly did not make minority "ownership" an end in itself. Rather, by allowing a group owner to hold additional interests if those interests were minority-controlled, the Commission hoped to make available to minorities financial and technical resources that would otherwise be

unavailable. Indeed, the Commission specifically stated, "we will increase to 14 the numerical station ownership limitation for persons acquiring cognizable interests in such minority owned *and controlled* broadcast stations." Amendment of Section 73.3555, 100 FCC 2d at 97.

300. Given the purpose for the exception to the "Rule of 12's," it is clear that the Commission never intended to abandon its practice of considering both *de jure* and *de facto* control in determining compliance with the multiple ownership rules. Indeed, it would be inimical to the stated goal of promoting minority participation in the broadcast industry if, in assessing compliance with §73.3555, the Commission did not require minority "owners" of a broadcast station to also control the business and activities of the station.³⁹ Thus, any interpretation of §73.3555 which omits consideration of actual working control is unreasonable on its face. Such an interpretation ignores past Commission practice; it disregards the stated goal underlying the minority-controlled exception to the multiple ownership rules; and it contravenes Note 1 to §73.3555. Thus, it would be abusive for a party to acquire or attempt to acquire cognizable interests in more than 12 stations if those additional interests were not under both *de jure* and *de facto* control of minorities.

301. The evidence reveals that between February 1987 and December 1991, Crouch, by virtue of his being an officer and director of TBN, held cognizable interests in 12

³⁹ As previously discussed, a non-stock corporation such as TTI/NMTV does not have "owners" in the traditional sense but simply has a board of directors whose members hold certain specific rights granted by the company's articles of incorporation and bylaws.

commercial television stations. During that period, none of TBN's three directors was a minority. On three different occasions -- February 1987 (the Odessa application), December 1987 (the Portland application), and March 1991 (the Wilmington application) -- NMTV asked the Commission to grant an application which would give Crouch an attributable interest in a 13th or 14th full power commercial television station. NMTV justified its requests on behalf of Crouch by claiming that it was minority-controlled since two of its three directors were members of minority groups. However, at no time prior to opposing Borowicz' challenge to the Wilmington application, did NMTV begin to fully inform the Commission about the nature and extent of its relationship with TBN. This deprived the Commission of the opportunity to determine for itself whether NMTV qualified as a minority-controlled company.

302. As discussed above, TBN was not merely the benevolent sponsor of NMTV. Nor was NMTV an independent entity. Rather, TBN *was* NMTV. As revealed in TBN's newsletters, the companies' corporate minutes, financial statements, programming plans, and application filings, NMTV virtually always acted in accordance with TBN's goals and wishes. The reality of the TBN and NMTV relationship was well known to Crouch, Duff, Juggert, and May. All must be charged with the knowledge that TBN had actual working control over NMTV.

303. Given such knowledge, NMTV, Crouch and TBN cannot completely shield themselves from a conclusion that abuses occurred by contending that they relied on their

communications counsel, Colby May, who advised that NMTV qualified as a minority-controlled entity. May was at all times relevant hereto the agent of both TBN and NMTV. It served both the interests of TBN and NMTV for May to opine as he did. Neither NMTV nor TBN questioned May's opinion even though May's advice was provided orally and contained no analysis of the pertinent rule or its history. NMTV and TBN should have exercised greater care in acting on May's advice which was dubious on its face because it omitted any consideration of TBN's actual working control over NMTV. Had such consideration been given, NMTV, Crouch and TBN could not have avoided questioning whether NMTV qualified as a minority-controlled company. Consequently, it must be concluded that NMTV, Crouch and TBN abused the Commission's processes by using the applications to garner Crouch cognizable interests to which he was not entitled.

Low Power Television Preferences

304. Section 1.1601, et seq., of the Commission's Rules provides that an LPTV applicant whose minority group ownership interest is more than 50 percent is entitled to claim a minority preference in an LPTV lottery. The practice of considering minority preferences in LPTV lotteries was adopted by the Commission in 1983. See Random Selection Lotteries, 93 FCC 2d 952 (1983). In developing its minority preference scheme, the Commission emphasized minority "ownership" over minority "control." Thus, for example, the Commission articulated that the minority status of a non-stock, non-profit corporation should be determined upon the basis of the "composition of the company's

board." Random Selection Lotteries, 93 FCC 2d at 977 (1983). In a Public Notice, No. 6030, released August 19, 1983, the Commission again expressed its view that a non-stock entity a majority of whose governing board consists of minorities is entitled to claim a minority preference in an LPTV lottery.

305. The record evidence establishes that TTI/NMTV, a non-stock corporation, claimed an entitlement to a minority preference in several LPTV applications. The record evidence further establishes that on those instances when it claimed a minority preference, a majority of TTI/NMTV's board of directors consisted of members of recognized minority groups. Since it is, and at all relevant times has been, the Commission's policy to determine eligibility for a minority preference in a non-stock corporate LPTV applicant *exclusively* on the basis of the composition of the applicant's governing board, and TTI/NMTV is a non-stock corporation a majority of whose directors, at all relevant times, consisted of minorities, it must be concluded that TTI/NMTV was entitled to claim a minority preference in LPTV lotteries. Therefore, to the extent that TTI/NMTV claimed an entitled to minority preferences in Commission LPTV lotteries, neither TTI/NMTV, Crouch nor TBN abused the Commission's processes.

3. TBF Qualifying Issue

306. The issue to be resolved is, in light of the evidence adduced pursuant to the *de facto* control and abuse of process issues, whether TBF is qualified to remain a Commission licensee. As previously discussed, it must be concluded that Crouch and TBN did exercise *de facto* control over NMTV and that NMTV, Crouch and TBN abused the Commission's processes by using NMTV to evade the provisions of §73.3555 of the Commission's Rules. It must also be concluded that there is no meaningful distinction between TBN and TBF. The two corporations have the same boards of directors; the two corporations are in fact controlled by the same principals; and TBF is treated by TBN as an owned and operated company. Thus, TBN's and Crouch's violations of the multiple ownership rules and their abuses of the Commission's processes have a direct bearing on TBF's qualifications. Character Policy Statement, 102 FCC 2d 1179, 1209-11, 1218 (1986) (subsequent history omitted). If TBN's actions warrant a loss of license, it may be proper to impose that loss upon TBF and deny its application for renewal of license. Likewise, if a lesser sanction is appropriate, then TBF should be found qualified to remain a Commission licensee.

307. When confronted with serious wrongdoing, the Commission possesses broad discretion to choose remedies and sanctions. KQED, Inc., 3 FCC Rcd 2601, 2608 (1988); Character Policy Statement, 102 FCC 2d at 1211; Abacus Broadcasting Corp., 8 FCC Rcd 5110-11, 5115 n. 10 (Rev. Bd. 1993). See also, RKO General, Inc., 3 FCC Rcd 5057, 5061 (1988). In determining appropriate sanctions, the Commission has considered among other

things: the nature of the rule or policy violation; the frequency of the violation; the wilfulness of the violation; the currency of the violation; the presence or absence of deceptive intent; the presence of any other circumstances that reveal whether the purpose behind the conduct at issue was obstructive, delaying or abusive; and what action is necessary to deter future misconduct. See Rainbow Broadcasting Company, 9 FCC Rcd 2839 at ¶ 44 (1994); KQED, Inc., 3 FCC Rcd at 2608; Character Policy Statement, 102 FCC 2d at 1210 n. 76, 1224 n. 103, 1227-9.

308. Here, TBN is guilty of two distinct violations: exercising *de facto* control over NMTV resulting in Crouch holding more interests than allowed under the multiple ownership rules; and abuse of process. Generally, the Commission has not found unqualified an applicant that exercised *de facto* control over another licensee in contravention of the Communications Act and the Commission's Rules. Rather, the Commission has granted the applications and imposed appropriate conditions and/or forfeitures. George E. Cameron, Jr. Communications, 56 RR 2d 825, 828-9 (1985); The Seven Hills Television Company, 2 FCC Rcd at 6887; CanXus Broadcasting Corporation, 8 FCC Rcd 4323 (MMB 1993). Thus, absent aggravating circumstances, TBN's and Crouch's continuous exercise of *de facto* control over NMTV (and its predecessor, TTI) does not warrant disqualification of TBF. See Lorain Journal Co. v. FCC, 351 F.2d 824 (D.C. Cir. 1965) (subsequent history omitted); Black Television Workshop of Los Angeles, Inc., 8 FCC Rcd 4192 (1993) (subsequent history omitted).

309. The more difficult question is whether the abuses perpetrated by TBN and Crouch in acquiring and attempting to acquire interests to which they were not entitled present the necessary aggravating circumstances which would justify denial of the instant TBF application. In this regard, the abuses committed were serious and repeated. On three separate occasions, Crouch, TBN, and NMTV provided the Commission only with information that was consistent with their self-serving, narrow interpretation of the multiple ownership rules. Each time, they created an impression that NMTV was minority-controlled when, in fact, it was not. Further, Crouch and TBN knew that NMTV was not controlled by the minorities on its board.

310. Nevertheless, the evidence does not support a conclusion that Crouch, TBN, or NMTV intended to deceive the Commission. The filing of NMTV's applications for consent to the assignment of the Odessa, Portland, and Wilmington authorizations was the product of religious zeal and a novel and bizarre legal theory. This legal theory was not fully explained to the Commission until the filing of NMTV's Request for Declaratory Ruling in November 1991, nearly five years after NMTV sought its first full power television authorization and after Borowicz filed his petition to deny NMTV's Wilmington application.

311. Considering all the circumstances, it must be concluded that the wrongdoing of Crouch, TBN, and NMTV does not warrant denial of TBF's license renewal application. Crouch and TBN are now in compliance with the multiple ownership rules, and there is no reason to believe that denial of TBF's application is necessary to ensure the future reliability

of Crouch and TBN or the truthfulness of their submissions. See Character Policy Statement, 102 FCC 2d at 1228. However, as more fully discussed infra, TBN and NMTV should be subjected to substantial forfeitures for their willful and repeated violations of the Communications Act and the Commission's Rules.

4. Renewal Expectancy

312. The incumbent's past performance affords the Commission the most reasonable basis for determining whether the public interest will be served by renewal of a license. Office of Communications of United Church of Christ v. FCC, 359 F.2d 994 (D.C. Cir. 1966) ("United Church of Christ"); Belo Broadcasting Corp., 47 FCC 2d 540 (1974). A licensee "runs on its record." United Church of Christ, 359 F.2d at 1007; Simon Geller, 90 FCC 2d 250, 271 (1982) (subsequent history omitted). Thus, a substantial record, sound, favorable and significantly above a level of mediocre service which might just minimally warrant renewal, gives rise to a renewal expectancy which in turn warrants a preference in a comparative renewal proceeding. See Broadcast Communications, Inc., 93 FCC 2d 1162, 1166 (1983), modified 97 FCC 2d 61 (1984), aff'd sub nom. Genesis Broadcasting, Inc. v. FCC, 759 F.2d 959 (D.C. Cir. 1985), citing Cowles Broadcasting, Inc., 86 FCC 2d 993 (1981), aff'd Central Florida Enterprises, Inc. v. FCC, 683 F.2d 503 (D.C. Cir. 1982) and Radio Station WABZ, Inc., 90 FCC 2d 818 (1982), aff'd Victor Broadcasting, Inc. v. FCC, 722 F.2d 756 (D.C. Cir. 1983). A substantial performance can be demonstrated by any type of showing reasonably related to demonstrating service over and above what would be considered minimal. Broadcast Communications, Inc., 93 FCC 2d at 1166.

313. In determining whether an incumbent is entitled to a renewal expectancy, the Commission has considered the following:

- (1) The licensee's efforts to ascertain the needs, problems and interests of its community;

- (2) The licensee's programmatic response to those ascertained needs;
- (3) The licensee's reputation in the community for serving the needs, problems and interests;
- (4) The licensee's record of compliance with the Communications Act and FCC rules and policies; and
- (5) The presence or absence of any special effort at community outreach or towards providing a forum for local self-expression.

Fox Television Stations, Inc., 8 FCC Rcd 2361, 2366-9 (Rev. Bd.), recon. den., 8 FCC Rcd 3583 (Rev. Bd.), rev. den., 9 FCC Rcd 62 (1993).

314. With regard to Criterion 1, the findings demonstrate that TBF has engaged in a continuing process of ascertaining the needs, problems and interests of its community. TBF's Public Affairs Director interviewed community leaders throughout the license term and stayed abreast of local issues by reading local papers, by viewing and listening to the coverage afforded issues by local broadcast media, and by reviewing the monthly agenda of the Miami City Commission. In addition, TBF ascertained issues by conducting telephone inquiries of some of the persons who called the station on its prayer line. During the process of identifying local issues of importance, TBF kept a running count so that it could determine which issues were viewed as most significant.

315. With respect to Criterion 2, TBF regularly produced and broadcast throughout the license term at least two programs -- Feedback (or South Florida Public Report, Feedback's temporary replacement) and Miami Praise the Lord -- which attempted to address ascertained needs. Each program covered subjects of local importance, featured guests who

dealt with the matters to be discussed, and aired at times of significant viewing. In addition, TBF broadcast TBN network programs such as Joy and 700 Club that addressed issues of local importance in Miami from a national perspective. Further, TBF regularly carried children's programming that sought not only to entertain but to educate. Finally, TBF continuously aired public service announcements which covered the gamut of issues ascertained by the station.

316. With respect to Criterion 3, it appears that WHFT(TV) enjoys a favorable reputation in the Miami area in terms of serving community needs. Affidavits from persons involved with 24 service organizations in the Miami area demonstrate that this reputation is derived not only from WHFT(TV)'s program offerings and outreach activities but from the way those Miami service organizations are able to inform viewers of their work, their needs and their location. While accolades for WHFT(TV)'s programming are by no means universal, the weight of opinion is clearly on the side of those who find that Station WHFT(TV) performs valuable community service.

317. With respect to Criterion 4, the record shows that TBF's three directors, in their capacity as the three directors of TBN, committed serious willful and repeated violations of the Communications Act and Commission's Rules and thrice abused the Commission's processes with respect to the acquisition and operation of full power television stations licensed to NMTV in Odessa, Texas, and Portland, Oregon, and NMTV's attempted acquisition of a full power station in Wilmington, Delaware. Accordingly, it is concluded